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FIRST GENERAL COUNSEL'S REPORT

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DATE RECEIVED: December 19, 2011

DATE OF NOTIFICATION: December 23, 2011

LAST RESPONSE RECEIVED: September 21, 2012

DATE ACTIVATED: October 1, 2012

EARLIEST SOL: May 1, 2016

LATEST SOL: Continuing

COMPLAINANTS:

Citizens for Responsibility and Ethics in
Washington
Melanie Sloan

RESPONDENTS:

Newt Gingrich
Callista Gingrich
Newt 2012, Inc. and Lisa Lisker in her official
capacity as treasurer
Gingrich Productions, Inc.

RELEVANT STATUTES AND
REGULATIONS:

2 U.S.C. § 434(b)(4)
2 U.S.C. § 439a(b)
2 U.S.C. § 441b(a)
11 C.F.R. § 104.9
11 C.F.R. § 113.1
11 C.F.R. § 114.2
11 C.F.R. § 100.52(d)(1)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter concerns the relationship between Newt Gingrich's principal campaign committee, Newt 2012, Inc. (the "Committee" or "Newt 2012"), and Gingrich Productions, Inc. ("Gingrich Productions"), a for-profit corporation that produces, sells, and promotes books and multimedia created by Gingrich and his wife, Callista Gingrich.

1 The Complaint makes four allegations. First, the Complaint alleges that Gingrich
2 Productions made prohibited in-kind corporate contributions to Newt 2012 when it paid certain
3 costs associated with "dual purpose" book signing events, at which Newt 2012 also collected
4 e-mail addresses for its use in soliciting contributions. Second, Newt and Callista Gingrich, as
5 Chief Executive Officers ("CEOs") of Gingrich Productions, allegedly facilitated a prohibited
6 corporate contribution when they authorized Gingrich Productions to make those payments for
7 the book signing events, and further when they authorized the company to provide a mailing list
8 to Newt 2012. Third, the Complaint alleges that Gingrich converted campaign funds to his
9 personal use when Newt 2012 paid him for the Gingrich Productions mailing list. And fourth,
10 Newt 2012 allegedly failed to report properly the disbursement to Gingrich for the purchase of
11 the mailing list. The Complaint cites three newspaper articles and Gingrich's Public Financial
12 Disclosure Report in support of these allegations.

13 The Respondents submitted a joint Response that denies the allegations and sworn
14 declarations from Gingrich Productions's Chief Operating Officer ("COO") and Newt 2012's
15 treasurer. In response to our invitation to clarify the Response, the Respondents also provided a
16 sworn declaration from Gingrich's executive assistant and personal scheduler, three of the
17 Gingriches' daily schedules, and two Gingrich Productions reimbursement forms.

18 Because the available information — including information that the Respondents
19 themselves provided — suggests that Gingrich Productions supplemented the costs of
20 campaign-related events, we recommend that the Commission find reason to believe that
21 Gingrich Productions, Callista Gingrich in her capacity as an officer of Gingrich Productions,
22 and the Committee violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a), (d), and (e) by making
23 or knowingly accepting in-kind corporate contributions from Gingrich Productions. Because the

1 record also indicates that Newt 2012 paid for certain costs related to Gingrich Productions events
2 and promotions and that Newt 2012's website promoted Gingrich Productions products, we also
3 recommend that the Commission find reason to believe that the Committee and Newt Gingrich
4 violated the personal use prohibition at 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1.

5 As to Newt 2012's alleged purchase of a mailing list, we recommend that the
6 Commission find reason to believe that the Committee violated 2 U.S.C. § 434(b)(4) and
7 11 C.F.R. § 104.9 when it failed to disclose a \$47,005 debt to Gingrich for its receipt of a
8 personal mailing list on its 2011 October Quarterly Report, and misreported the purpose of that
9 debt and corresponding disbursement on its 2011 July Quarterly Report and amended 2011
10 October Quarterly Report. Finally, we recommend that the Commission dismiss the allegations
11 concerning the sale or transfer to Newt 2012 of a mailing list owned by Gingrich Productions.

12 II. FACTUAL AND LEGAL ANALYSIS

13 A. Factual Background

14 Newt Gingrich was a candidate for the 2012 Republican presidential nomination. Newt
15 2012 is Gingrich's principal campaign committee registered with the Commission, and Lisa
16 Lisker is Newt 2012's treasurer. Newt 2012, Statement of Organization (May 16, 2011).
17 Gingrich suspended his campaign on May 2, 2012.

18 Gingrich Productions is a Georgia for-profit corporation that produces, sells, and
19 promotes books and multimedia created by Gingrich and his wife, Callista Gingrich. Resp. at 6.
20 Gingrich Productions, Inc. originally filed its Articles of Incorporation as a domestic profit
21 corporation on February 14, 2007, and listed Callista Gingrich as its CEO on subsequent filings.
22 See Gingrich Productions, Certificate of Incorporation (Feb. 14, 2007), *available at*
23 <http://soskb.sos.state.ga.us/corp/soskb/Filings.asp?1289025>. On May 10, 2011, six days before

1 Gingrich registered with the Commission as a presidential candidate, this corporation filed a
2 Certificate of Conversion, changing its registration to a domestic limited liability corporation and
3 its name to Gingrich Legacy Productions, Inc. See Gingrich Productions, Certificate of
4 Conversion (May 10, 2011), *available at*
5 <http://soskb.sos.state.ga.us/corp/soskb/Filings.asp?1289025>. On the same day, another of
6 Gingrich's domestic profit corporations, Gingrich Holdings, Inc., which had originally listed
7 Gingrich as its CEO, amended its Articles of Incorporation to change its name to Gingrich
8 Productions, Inc., listing Callista Gingrich as its CEO. Compl., Ex. 3; *see also* Gingrich
9 Holdings, Certificate of Amendment (May 10, 2011), *available at*
10 <http://soskb.sos.state.ga.us/corp/soskb/Filings.asp?1101589>.

11 Gingrich's 2011 Public Financial Disclosure Report filed with the Commission and
12 Office of Government Ethics states that Gingrich received \$2,453,409 in income from Gingrich
13 Productions from January 2010 through July 2011, and had an ongoing agreement with Gingrich
14 Productions for salary and "Ownership Quarterly S-Corp Dividend Distributions." Compl.,
15 Ex. 8.¹

16 **B. Legal Analysis**

17 **1. There Is Reason to Believe that Gingrich Productions Paid Certain**
18 **Costs Associated with Campaign-Related Events**

19 According to the Complaint, Gingrich held "dual purpose" events over the course of his
20 presidential campaign where, in close physical and temporal proximity, he made campaign
21 speeches and sold and signed books that he or his wife had authored. Compl. at 5-6. The

¹ Gingrich later amended this report to disclose \$2,940,023 in income and \$291,250 in salary from Gingrich Productions. See Newt Gingrich, Form SF 278 (amended Feb. 21, 2012) (available in Voting Ballot Matters folder).

1 Complaint alleges that Gingrich Production's payment of costs associated with these events
2 constituted prohibited corporate contributions to Newt 2012. *Id.* at 7 (citing 2 U.S.C. § 441b(a)).

3 The Complaint relies on several newspaper articles to support its claim. It cites a
4 *Washington Post* article reporting that Gingrich "regaled political supporters with a rousing
5 stump speech — then sidled over to a stable in the corner to sell books" at a November 2011
6 event in Naples, Florida. *Id.* at 5-6, Ex. 10 (citing Amy Gardner, *Gingrich's Book-Selling Efforts*
7 *Test Law*, WASH. POST, Dec. 8, 2011 [hereinafter Gardner, *Book-Selling Efforts*],
8 [http://www.washingtonpost.com/politics/gingrichs-book-selling-efforts-test-](http://www.washingtonpost.com/politics/gingrichs-book-selling-efforts-test-law/2011/12/06/gIQAtpqYfO_story.html)
9 [law/2011/12/06/gIQAtpqYfO_story.html](http://www.washingtonpost.com/politics/gingrichs-book-selling-efforts-test-law/2011/12/06/gIQAtpqYfO_story.html)). The article also reported that, a few days later,
10 "hundreds of fans crammed into an historic theater to listen to his pitch to be the next president
11 — then lined up in the lobby to buy books" at an event in Charleston, South Carolina. Gardner,
12 *Book-Selling Efforts, supra*. The *Washington Post* article noted that, at the Naples event,
13 "assistants from the campaign and the business mingled to manage the crowd and the candidate,"
14 and concluded that "the extent to which Gingrich Productions helps Gingrich for President —
15 and vice versa — is obvious on the road." *Id.*

16 The Complaint also cites a *New York Times* piece, which reported that Gingrich spent
17 "substantial time" promoting and signing his books over the course of his presidential campaign.
18 Compl. at 6, Ex. 11 (citing Trip Gabriel, *Gingrich, Ahead in Polls, Is Still Selling Books*, N.Y.
19 TIMES, Dec. 8, 2011 [hereinafter Gabriel, *Ahead in Polls*],
20 [http://www.nytimes.com/2011/12/09/us/politics/gingrich-the-front-runner-is-still-selling-](http://www.nytimes.com/2011/12/09/us/politics/gingrich-the-front-runner-is-still-selling-books.html?pagewanted=all)
21 [books.html?pagewanted=all](http://www.nytimes.com/2011/12/09/us/politics/gingrich-the-front-runner-is-still-selling-books.html?pagewanted=all)). The *New York Times* article stated that, at book signing events,
22 "[a]lthough some buyers are under the impression that sales of [the Gingriches'] books, like T-
23 shirts or coffee mugs, support the campaign, the proceeds go to the Gingriches personally."

1 Gabriel, *Ahead in Polls*, *supra*. Reportedly, more than 100 book buyers lined up for Gingrich's
2 signature "after a town hall-style appearance on Staten Island" on December 3, 2011. *Id.*

3 According to the cited *Washington Post* article, Stefan Passantino, counsel to both the
4 campaign and Gingrich Productions — and counsel to Respondents here — "has produced a set
5 of detailed protocols governing how Gingrich Productions . . . interacts with the campaign."

6 Gardner, *Book-Selling Efforts*, *supra*. Passantino reportedly said that expenses for each "have to
7 be strictly segregated," and "where it's unclear — the cost of airfare to a city for both types of
8 events, for instance — [he] defers to an FEC advisory opinion that calls for the campaign to
9 pay."² *Id.*

10 The Response asserts that "factual inferences contained within the complaint are wrong"
11 and that the articles are inaccurate. Resp. at 1-3, 10-14. The Response claims that, in fact, the
12 articles show that Newt 2012 and Gingrich Productions implemented a "necessary wall of
13 separation" between campaign and business events through "separately-scheduled,
14 separately-funded, and separately staffed events." *Id.* at 7, 12-13, 17. The Response includes a
15 sworn declaration of Alicia Melvin, the COO of Gingrich Productions (formerly Gingrich
16 Holdings) since 2009. Decl. of Alicia Melvin ¶¶ 1, 9 (Feb. 4, 2012) (Attached as Exhibit 9 to the
17 Response). Melvin attests that, to her knowledge, "in all situations where Gingrich Productions
18 has hosted marketing or promotional events in close proximity to political campaign events, the
19 company has never used corporate resources to pay for any portion of the events promoting the

² The Complaint cites a different version of the *Washington Post* article, which appears to have been republished by *World News* and printed from the website www.ftaconcept.com. Compl., Ex. 10. It is no longer accessible online, and we have been unable to locate it using news database searches. The different version of the article cited in the Complaint also stated that "it's okay for schedulers from each event to coordinate events so that a book signing coincides with a political speech." *Id.* This statement, however, is not included in the most recent version of the article available on the *Washington Post*'s website. Gardner, *Book-Selling Efforts*, *supra*.

1 federal candidate" or "used corporate resources to facilitate or aid the making of present or future
2 contributions to the federal candidate." *Id.* ¶ 9.

3 During our review of this matter, we offered the Respondents the opportunity to clarify
4 the "necessary wall of separation" mentioned in their Response if they wished to do so. Letter
5 from Kathleen Guith, Deputy Associate General Counsel, FEC, to Stefan C. Passantino and
6 Benjamin P. Keane, Counsel to Respondents (Aug. 8, 2012). We received a response to that
7 letter from the Respondents jointly, which explains that "to maximize the number of appearances
8 during 2011 and 2012, Gingrich Productions was often forced to organize, plan and hold events
9 in cities, towns and localities where the Speaker and his wife were campaigning," and campaign
10 and business events would occur in "adjacent or nearly-adjacent time slots" and were "held in
11 different meeting rooms of large conference hotels or in restaurants or businesses in very close
12 proximity to one another." Letter from Stefan C. Passantino and Benjamin P. Keane, Counsel to
13 Respondents, to Kathleen Guith, Deputy Associate General Counsel, FEC at 3 (Sept. 21, 2012)
14 ("Supplemental Response"). The Supplemental Response further asserts that Newt 2012 and
15 Gingrich Productions used a "firewall" with respect to staffing and funding, but does not provide
16 any further details concerning the nature of that separation. *Id.*

17 The Supplemental Response includes the sworn declaration of Gingrich's executive
18 assistant and personal scheduler, Elizabeth Davis Kelly, who was a Newt 2012 employee during
19 Gingrich's campaign. Decl. of Elizabeth Davis Kelly ¶ 1 (Sept. 20, 2012) (Attached as Exhibit 1
20 to the Supplemental Response). Kelly attests that she was responsible for scheduling both types
21 of events and gave her "concerted best efforts to ensure that the Speaker's daily schedule at all
22 times reflected a clear separation between campaign and Gingrich Productions events." *Id.* ¶¶ 2,
23 4-5. The declaration states that Kelly was not present for all events during the relevant time and

1 cannot speak universally, but does not recall any "problematic cross-over." *Id.* ¶ 6. The
2 Supplemental Response also provides three of the Gingriches' daily schedules and two Gingrich
3 Productions reimbursement forms, which the Respondents argue demonstrate that events were
4 separately staffed and funded. Supplemental Resp. at 3-4, Ex. 2-6.

5 But these documents are at odds with Respondent's argument. In some cases, the daily
6 schedules and reimbursement forms indicate that Newt 2012 employees were designated as staff
7 for Newt 2012 events and Gingrich Productions employees were designated as staff for Gingrich
8 Productions events. *See id.*, Ex. 2-4. In other cases, however, it appears that some staffers may
9 have had mixed duties. *See id.*

10 The Supplemental Response asserts that Anna Haberlein and Alicia Melvin were
11 Gingrich Productions employees, and Adam Waldeck, Michelle Selesky, and Andrew Bell were
12 Newt 2012 employees.³ *Id.* at 4. But Newt 2012's disclosure reports filed with the Commission
13 represent that Newt 2012 made disbursements to both Haberlein and Melvin for "salary" in early
14 2012.⁴ Even before Haberlein and Melvin went on Newt 2012's payroll, they appear to have
15 served as staff for Callista Gingrich when she attended Newt 2012 events. Conversely, Waldeck
16 and Bell served as staff for Newt Gingrich as Newt 2012 employees when he appeared at
17 Gingrich Productions book signings and events, as described below.

- 18 • On October 5, 2011, Haberlein was listed as the "all day trip leader" for Callista
19 Gingrich. This day included, in addition to Gingrich Productions events, multiple events
20 that appear campaign-related for Callista Gingrich, including a Newt 2012 breakfast, a
21 Newt 2012 town hall, and travel with her husband for several of his media interviews.
22 *Id.*, Ex. 2.
23

³ We are aware of no information that suggests that any of these individuals acted in a volunteer capacity.

⁴ Newt 2012 made salary disbursements to Haberlein of \$1,375 on February 29, 2012, and \$2,056 on April 2, 2012, and salary disbursements to Melvin of \$2,700 on January 21, 2012, \$4,532 on February 29, 2012, and \$2,435 on April 2, 2012. Haberlein's publicly available LinkedIn profile also lists Newt 2012 as her employer from 2011 to 2012. *See* <http://www.linkedin.com/pub/anna-haberlein/4a/925/864>.

- Under the Federal Election Campaign Act of 1971, as amended, (the “Act”) corporations and their officers are prohibited from making contributions from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(a), (e). It is also unlawful for any candidate or political committee to knowingly accept or receive corporate contributions. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(d). The Act defines a contribution as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. § 431(8)(A)(i). Under the Commission’s regulations, the term “anything of value” includes all in-kind contributions, and unless specifically exempted, the provision of goods and services for

www.ck12.org

www.ck12.org

The Complaint cited newspaper articles in support of the proposition that Gingrich Productions may have provided in-kind goods and services to Newt 2012. But — even putting the Complaint and news reports aside — the Respondents' own records give reason to believe that they violated the Act. Documents submitted with the Supplemental Response suggest that Gingrich Productions employees may have assisted the Gingriches at campaign-related events while being compensated for that work and travel by Gingrich Productions. For example, the October 5, 2011, schedule for South Carolina shows that Haberlein, a Gingrich Productions

1 employee, served as Callista Gingrich's "all day trip leader" on a date she attended a Newt 2012
2 breakfast and Newt 2012 town hall, and on which she travelled with Newt Gingrich for several
3 of his media interviews designed to further his campaign. Supplemental Resp., Ex. 2.
4 Haberlein's corresponding Gingrich Productions reimbursement form for October 2011 reflects
5 that Gingrich Productions reimbursed her for lodging in Charleston, air travel from Washington,
6 D.C. to Atlanta, and air travel from Charleston to Washington, D.C. on or around this time
7 period. *Id.*, Ex. 5. Likewise, the December 7, 2011, schedule for New York and New Jersey
8 indicates that Melvin, another Gingrich Productions employee, served as Callista Gingrich's "all
9 day trip leader" on a date she attended apparent campaign-related events such as a meeting with
10 Congressman Fossela, a meeting with members of the Staten Island Tea Party, a Newt 2012
11 town hall, and the GOP Attorneys General/Fox News Candidate Forum. *Id.*, Ex. 4.

12 Further, one of Haberlein's reimbursement forms shows that she labeled costs for three
13 hotel stays, two parking charges, and three food purchases in December 2011 as "*campaign*"
14 under "Client or Project Code." *Id.*, Ex. 6 (emphasis added).

15 The Supplemental Response does not address any reimbursement practices, but asserts in
16 reference to the reimbursement forms that Gingrich Productions staff "in no way had their
17 expenses covered by Newt 2012" and "all non-campaign expenses affiliated with Gingrich
18 Productions promotional activities were segregated from those costs associated with the Newt
19 2012 campaign." *Id.* at 4.⁵ The Supplemental Response also does not address the fact that Newt

⁵ Melvin, the COO of Gingrich Productions, and presumably a staffer for Callista Gingrich, submitted a declaration stating that she has "worked to ensure" that the company's events were "independently funded, staffed, and operated" and that "business activities, travel, and other expenses associated with the sale or promotion of Gingrich Productions products are borne purely by the company." Melvin Decl. ¶ 8. She also avers that, "to the best of her knowledge," Gingrich Productions has not paid "for any portion of the events promoting the Federal candidate." *Id.* ¶ 9. These attestations, however, do not explain and cannot be squared with the staffing and reimbursement schedules submitted by the Respondents.

1 2012 reported making salary disbursements to Haberlein and Melvin in early 2012, but not in
2 2011, when the majority of the events and travel at issue occurred.

3 The record here provides considerable reason to believe that Gingrich Productions
4 compensated and reimbursed employees for campaign-related costs and that Newt 2012 was
5 aware of such improper contributions. Accordingly, we recommend that the Commission find
6 reason to believe that Gingrich Productions, Callista Gingrich in her capacity as an officer of
7 Gingrich Productions, and the Committee violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a),
8 (d), and (e) by making or knowingly accepting in-kind corporate contributions from Gingrich
9 Productions.

10 2. **There Is Reason to Believe that Newt 2012 Staff Provided Services**
11 **Benefiting Gingrich Productions and Newt and Callista Gingrich in**
12 **Violation of the Personal Use Prohibition**

13 Under the Act and Commission regulations, a candidate and the candidate's authorized
14 committees may not use funds in a manner that would result in the conversion of campaign funds
15 to the personal use of the candidate or any other person. 2 U.S.C. § 439a(b); 11 C.F.R.
16 § 113.1(g). The Act provides that "a contribution or donation shall be considered converted to
17 personal use if the contribution or amount is used to fulfill any commitment, obligation or
18 expense of a person that would exist irrespective of the candidate's election campaign or
19 individual's duties as a holder of Federal office." 2 U.S.C. § 439a(b)(2); *see* 11 C.F.R.
20 § 113.1(g). Therefore, conversion to personal use occurs when a committee uses campaign
21 funds to pay for more than *de minimis* costs related to or promoting a candidate's products and
22 the candidate receives royalties or other income from the sale of those products. *See* Advisory
23 Op. 2006-07 (Hayworth) (concluding that "expenses associated with marketing a book that a
24 commercial publisher has published and for which it pays royalties to the author are expenses

1 that exist irrespective of the candidate's election campaign or duties as a holder of Federal
2 office" unless the amount of promotional material and cost to the committee are *de minimis*).⁶

3 Not only did Gingrich Productions apparently supplement the costs of campaign-related
4 events, but it also appears that Newt 2012 paid campaign staff to provide assistance relating to
5 Gingrich Productions events and promotions that would have existed irrespective of Gingrich's
6 candidacy in violation of the Act. For example, Gingrich's executive assistant and personal
7 scheduler, who attests that she "worked for" Newt 2012 in that capacity,⁷ was responsible for
8 scheduling both campaign and non-campaign appearances and events in conjunction with Newt
9 2012 and Gingrich Productions. Kelly Decl. ¶ 2. Moreover, the October 5, 2011, schedule lists
10 Waldeck — who is identified as a Newt 2012 employee, *see* Supplemental Resp. at 4 — as the
11 "all day trip leader" for Gingrich on a date that included a Gingrich Productions screening,
12 question and answer session, and product signing. *Id.*, Ex. 2. And the October 7, 2011, schedule
13 appears to designate Bell — another Newt 2012 employee, *see id.* at 4 — as staff for the product
14 signing. *Id.*, Ex. 3; *see also id.*, Ex. 4 (listing Bell as the "all day trip leader" for Gingrich on a

⁶ The Commission has recognized that a candidate may need to travel "for a mixture of personal and campaign and officeholder activities." Explanation and Justification for Final Rules on Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7869 (Feb. 9, 1995). If campaign-related events generate travel costs such as lodging, meals, or ground transportation, campaign funds must be used to pay for those expenses. *See* 11 C.F.R. § 106.3(b)(3) (stating that where a candidate conducts non-incidental campaign-related activity at a stop, the entire stop is campaign-related, and travel expenditures made for that stop are reportable). *But see id.* § 113.1(g)(1)(ii)(C) (stating that campaign funds may be used to pay incremental trip expenses that result from personal activity only if the person benefitting from the use reimburses the campaign within 30 days). With respect to mixed purpose air travel, the Commission historically has considered the costs of airfare to a single location for mixed use to be a "defined expense," and conducted a personal use analysis on a case-by-case basis to determine whether the travel "would have existed irrespective of any . . . campaign related activities," thus prohibiting the committee from paying or requiring reimbursement. *See* Advisory Op. 2002-05 (Hutchinson) (concluding that the airfare of an official traveling for business, personal, and campaign reasons was a defined expense that would have occurred irrespective of any campaign activity and none of the airfare could be paid by the campaign); Factual & Legal Analysis at 2-7, MUR 6127 (Obama for America) (concluding that the President's travel to Hawaii would have occurred irrespective of his campaign, and he should have reimbursed his campaign under 11 C.F.R. § 113.1(g)(1)(ii)(C)). *But see* Advisory Op. 2011-02 (Brown) (Commission unable to advise whether candidate could host fundraisers in cities where book publisher paid travel costs).

⁷ Newt 2012 reported making disbursements to Kelly for "salary," "travel," and "administrative consulting" from July 2011 through June 2012.

1 day that involved Gingrich Productions promotions). Finally, Melvin — a putative Gingrich
2 Productions employee, *see id.* at 4 — was listed as a passenger on a shared chartered flight to
3 and from Newark on December 3, 2011, with Newt 2012 employees. *Id.*, Ex. 4.

4 These transactions provide a strong showing that staff and services of Newt 2012 were
5 used for events and travel benefitting Gingrich Productions, despite the Respondents' asserted
6 use of a "necessary wall of separation."⁸ Accordingly, we recommend that the Commission find
7 reason to believe that the Committee and Newt Gingrich violated the personal use prohibition at
8 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1.

9 3. **There Is Reason to Believe that Newt 2012 and Newt Gingrich**
10 **Promoted Gingrich Productions Products on the Newt 2012 Website**
11 **in Violation of the Personal Use Prohibition**

12 The press reports submitted with the Complaint refer to portions of the Newt 2012
13 website that promoted Gingrich Productions book signings and provided links to the Gingrich
14 Productions website. Compl., Ex. 10-11. The *Washington Post* reported that "[a]t Gingrich's
15 website, a schedule of events regularly promotes the book-signings, and a column called
16 'Callista's Canvas' features this link: 'Callista Gingrich's Ellis the Elephant, the Sequel, Coming
17 Soon.'" Gardner, *Book-Selling Efforts*, *supra*. The *New York Times* similarly reported that
18 "[t]here is a link to [Gingrich Productions] from the campaign's Web site." Gabriel, *Ahead in*
19 *Polls*, *supra*.

20 Personal use occurs when a candidate's authorized campaign committee places more than
21 a *de minimis* amount of promotional materials on a campaign website or related social media.
22 See 2 U.S.C. § 439a(b); 11 C.F.R. § 113.1(g); Advisory Op. 2011-02 (Brown) (concluding that a

⁸ Gingrich's schedule further indicates the degree to which his campaign activities intertwined with promoting Gingrich Productions products. On October 5, 2011, Gingrich was scheduled to be interviewed by a morning radio show; his schedule reminds him to promote during the interview both a town hall event and a screening of a movie produced by Gingrich Productions. Supplemental Resp., Ex. 2.

1 candidate's expenses as an author to market a book existed irrespective of that candidate's
2 campaign, and use of an authorized committee's asset, such as a website, to promote more than a
3 *de minimis* amount of promotional material resulted in personal use).

4 The record reflects that Newt 2012 posted far more than a *de minimis* amount of
5 promotional material on its website, www.newt.org.⁹ During our review, we found that the
6 campaign website includes over 80 links to various product pages of the Gingrich Productions
7 website, as well as blog entries that describe Gingrich Productions products, book readings and
8 signings, and movie screenings.¹⁰ These links account for approximately 10% of the total links
9 on the campaign website, and Gingrich Productions-related posts account for over 40% of the
10 total content on "Callista's Canvas," a blog maintained on the Newt 2012 website.

11 The Newt 2012 website's main page includes, for example, a direct link to a product page
12 for Callista Gingrich's children's book *Sweet Land of Liberty*, as well as several links to pages
13 that feature links to Gingrich Productions product pages. See NEWT 2012,
14 <http://www.newt.org/home/>. The "Meet Newt" and "Meet Callista" pages include approximately
15 20 links to product pages on Gingrich Productions's website. See *Meet Newt*, NEWT 2012,
16 <http://www.newt.org/meet-newt/> (providing a link to the product page for Gingrich's book
17 *Victory at Yorktown*); *Meet Callista*, NEWT 2012, <http://www.newt.org/meet-callista/> (providing
18 links to the promotional pages for seven Gingrich Productions films and nine Gingrich
19 Productions audio books). In addition, 69 of the 171 total postings on the "Callista's Canvas"
20 blog, spanning May 1, 2011, to April 25, 2012, contain links to Gingrich Productions product

⁹ The website includes a disclaimer stating that it was paid for by Newt 2012. Newt 2012's disclosure reports indicate that Newt 2012 paid Gingrich Productions \$8,400 on April 27, 2011, for "web development," and another \$35,332 on November 9, 2011, and \$31,682 on December 14, 2011, for "web hosting."

¹⁰ We indexed the relevant portions of the Newt 2012 website in August 2012, available in the Voting Ballot Matters folder. Some photos, and many of the links to specific Gingrich Productions product pages, which worked at that time, are now broken, with the links instead directing readers to a general Gingrich Productions page.

1 pages and provide detailed descriptions of Gingrich Productions products and events. *See, e.g.,*
2 *Callista Gingrich Campaigns for Newt in Rhode Island*, NEWT 2012,
3 <http://www.newt.org/2012/04/17/callista-gingrich-campaigns-for-newt-in-rhode-island/> (posted
4 Apr. 17, 2012) (providing a description and video of a reading and linking to the *Sweet Land of*
5 *Liberty* product page); *Our Visit to Little Oaks School*, NEWT 2012,
6 <http://www.newt.org/2012/02/19/our-visit-to-little-oaks-school/> (posted Feb. 19, 2012)
7 (providing a description and picture of a reading and linking to the *Sweet Land of Liberty* product
8 page); *A City Upon a Hill in Savannah*, NEWT 2012, [http://www.newt.org/2011/06/21/a-city-](http://www.newt.org/2011/06/21/a-city-upon-a-hill-in-savannah/)
9 [upon-a-hill-in-savannah/](http://www.newt.org/2011/06/21/a-city-upon-a-hill-in-savannah/) (posted June 21, 2012) (linking to the *A City Upon a Hill* product page
10 and providing a detailed description of the movie).

11 We invited the Respondents to address whether the use of the campaign's website to
12 promote Gingrich Productions products is consistent with the personal use restrictions of the Act.
13 *See* Aug. 8, 2012, Letter at 2. The Supplemental Response states that Newt 2012 followed the
14 Commission's advice in Advisory Opinion 2011-02 (Brown), which permitted Senator Scott
15 Brown to post a *de minimis* amount of promotional materials for his autobiography on his
16 campaign website. Supplemental Resp. at 7. That reliance is misplaced.

17 In that recent advisory opinion, the Commission addressed a proposal by Brown and his
18 authorized committee to post information about his autobiography, how to buy it, and the book
19 tour on no more than 25% of his campaign "home page." Advisory Op. 2011-02 (Brown) at 2.
20 Brown also proposed posting promotional materials on no more than 25% of his Facebook page,
21 10% of his Twitter feed, and 25% of his LinkedIn page. *Id.* at 3. The Commission concluded
22 that this amount of promotional material "does *not* appear to represent a *de minimis* amount of
23 material." *Id.* at 7 (emphasis added). The Commission noted, however, that Brown's committee

1 could post a *de minimis* amount of material at *de minimis* cost on its website consistent with a
2 prior advisory opinion that permitted “the addition of a single sentence, or, *at most*, two
3 sentences of promotional material about a candidate’s book to an authorized committee’s
4 substantial website.” *Id.* (citing Advisory Op. 2006-07 (Hayworth)) (emphasis added).

5 The Newt 2012 website goes well beyond the “at most, two sentences of promotional
6 material” standard in the Hayworth advisory opinion and *far* exceeds the quantum proposed and
7 rejected in the Brown advisory opinion. The amount of material on Newt 2012’s website related
8 to Gingrich Productions events and products is far from *de minimis*.

9 The Supplemental Response also argues that the links and material relating to products of
10 Gingrich Productions “served no direct promotional or marketing purpose for either Gingrich
11 Productions or Mrs. Gingrich.” Supplemental Resp. at 9. The Respondents assert that the links
12 and schedule of events did not directly ask website readers to purchase products from or
13 otherwise support Gingrich Productions, but instead “provided a direct avenue for Newt 2012
14 website readers to connect with other internet sites containing substantive information,” or
15 “provid[ed] potential voters with pertinent information regarding approaching opportunities . . .
16 to meet Speaker Gingrich and hear him speak about his presidential candidacy and various public
17 policy issues,” including at a “small percentage” of “non-campaign book signings.” *Id.* The
18 Respondents assert that the Gingrich Productions materials on the website were merely intended
19 to provide autobiographical details about the Gingriches’s “day-to-day activities.” *Id.* at 7-9.

20 This argument is equally unavailing. Numerous pages on the Newt 2012 website
21 describe the products and promotional events in detail and include links that take readers to web
22 pages that *expressly* urge the purchase of Gingrich Productions products. Further, the Brown
23 advisory opinion, also involving autobiographical material, did not limit its discussion only to

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1 content that expressly exhorts an audience to purchase a product. *See* Advisory Op. 2011-12
2 (Brown) (addressing information “about the book and the book tour . . . *including* how to
3 purchase the book and where to meet Senator Brown on the book tour”) (emphasis added).

4 We thus recommend that the Commission find reason to believe that the Committee and
5 Newt Gingrich violated 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1 through the promotional use of
6 a website that Newt 2012 funded.

7 4. There Is Reason to Believe that Newt 2012 Failed to Disclose a Debt to
8 Gingrich for the Use of a Mailing List and Misreported the Purpose of
9 that Debt and the Related Disbursement

10 According to the Complaint, Newt 2012 made a payment to Gingrich in the third quarter
11 of 2011 for a mailing list sold to the campaign during the second quarter of 2011, but did not
12 report this disbursement or debt on its 2011 October Quarterly Report. Compl. at 8. The
13 Complaint bases this allegation on another article in the *Washington Post*, which indirectly
14 quoted a campaign spokesman, R.C. Hammond, as stating that Newt 2012 owed Gingrich “about
15 \$42,000” in the second quarter of 2011 for the cost of the candidate’s personal mailing list,
16 which Gingrich had sold to the campaign. *Id.* at 5, Ex. 9 (citing Dan Eggen, *Gingrich Fighting*
17 *Massive Debt Racked Up in Campaign’s Extravagant Early Days*, WASH. POST, Dec. 6, 2011
18 [hereinafter Eggen, *Gingrich Debt*], [http://www.washingtonpost.com/politics/gingrich-fighting-](http://www.washingtonpost.com/politics/gingrich-fighting-massive-debt-racked-up-in-campaigns-extravagant-early-days/2011/12/01/gIQAtoKzZO_story.html)
19 [massive-debt-racked-up-in-campaigns-extravagant-early-](http://www.washingtonpost.com/politics/gingrich-fighting-massive-debt-racked-up-in-campaigns-extravagant-early-days/2011/12/01/gIQAtoKzZO_story.html)
20 [days/2011/12/01/gIQAtoKzZO_story.html](http://www.washingtonpost.com/politics/gingrich-fighting-massive-debt-racked-up-in-campaigns-extravagant-early-days/2011/12/01/gIQAtoKzZO_story.html)). Hammond reportedly stated that “Gingrich was paid
21 for the mailing list in the third quarter [of 2011].” Eggen, *Gingrich Debt*, *supra*. The article
22 noted that the payment “does not appear to be disclosed as required on Federal Election
23 Commission reports, something Hammond said might have been an oversight.” *Id.*

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Newt 2012's 2011 October Quarterly Report did not initially disclose any existing debt owed to Gingrich for a mailing list at the beginning of the reporting period, or any disbursements to Gingrich for a mailing list. It did, however, report an outstanding balance of \$2,130.40 owed to Gingrich for "travel" at the beginning of the reporting period. Newt 2012 later amended its 2011 October Quarterly Report to disclose a larger debt of \$47,005 owed to Gingrich for "travel" at the beginning of the reporting period. This amount corresponds to a \$47,005 debt reported as "Direct Mail List/Travel" on the 2011 July Quarterly Report and a \$47,005 disbursement to Gingrich reported as "List Purchase" on the 2011 Year End Report. Gingrich's 2011 Public Financial Disclosure Report filed with the Office of Government Ethics did not include the mailing list or resulting debt as a personal asset. Compl., Ex. 8.

11 The Respondents deny that Newt 2012 made a \$42,000 payment to Gingrich for a
12 mailing list in the third quarter of 2011. Resp. at 29-30. The Respondents appear to argue that
13 the payment of “about \$42,000” referenced in the *Washington Post* article was, in fact, the
14 \$47,005 debt and payment reported on Newt 2012’s 2011 July Quarterly and Year End Reports,
15 which was mistakenly omitted on the Committee’s original 2011 October Quarterly Report and
16 subsequently misreported as “travel” on its amended 2011 October Quarterly Report. *Id.* The
17 Respondents acknowledge, however, that Newt 2012 failed to disclose timely a \$47,005 debt to
18 Gingrich for the mailing list on its 2011 October Quarterly Report. Resp. at 30 n.9; Decl. of Lisa
19 Lisker ¶ 10 n.1 (Attached to the Response as Exhibit 8).

20 The Act requires committee treasurers to file reports of receipts and disbursements in
21 accordance with the provisions of 2 U.S.C. § 434. *See* 2 U.S.C. § 434(a)(1); 11 C.F.R.
22 § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and
23 disbursements, including the amount and nature of outstanding debts and obligations owed by or

1 to the reporting committee. *See* 2 U.S.C. § 434(b); 11 C.F.R. §§ 104.3, 104.9. The Act also
2 requires committees to disclose itemized breakdowns of receipts and disbursements, including a
3 brief statement or description of why the disbursement was made; and disclose the name and
4 address of each person who has made any contribution or received any disbursement in an
5 aggregate amount or value in excess of \$200 within the calendar year, together with the date and
6 amount of any such contribution or disbursement. *See* 2 U.S.C. § 434(b)(2)-(6); 11 C.F.R.
7 § 104.3(a)(3)-(4), (b)(2)-(4).

8 Based on Newt 2012's own characterizations, the Committee did not comply with the
9 Act's reporting requirements when it failed to disclose the \$47,005 debt to Gingrich for the
10 mailing list on its 2011 October Quarterly Report. Moreover, Newt 2012 did not comply with
11 the Act's reporting requirements when it disclosed the purpose of the \$47,005 debt on its
12 amended 2011 October Quarterly Report as "travel" and the purpose of the \$47,005 payment on
13 its 2011 Year End Report as "Direct Mailing List/Travel." According to the Respondents, the
14 sole purpose of this debt and disbursement was to compensate Gingrich for the mailing list and
15 was unrelated to travel. *Resp.* at 30 n.9; *Lisker Decl.* ¶ 10 n.1. Accordingly, we recommend that
16 the Commission find reason to believe that the Committee violated 2 U.S.C. § 434 and 11 C.F.R.
17 § 104.9.

18 **5. The Commission Should Dismiss the Allegations Concerning the Sale or**
19 **Transfer to Newt 2012 of a Mailing List Owned by Gingrich Productions**

20 The Complaint also alleges that Newt and Callista Gingrich, as CEOs of Gingrich
21 Productions, authorized the company's transfer of a mailing list to Newt 2012 for the purpose of
22 soliciting contributions, or authorized Gingrich Productions to pay costs associated with "dual
23 purpose" book signing events at which employees collected e-mail addresses that Newt 2012
24 would use to solicit contributions. *Compl.* at 5-8 (citing Gardner, *Book-Selling Efforts*, *supra*

1 ("The Gingriches collect signatures for the political campaign in the same places where they sign
2 books.");¹¹ Gabriel, *Ahead in Polls*, *supra* ("At readings, aides collect customers' e-mails to add
3 to fund-raising pitches for the campaign.")). The Complaint further alleges that Gingrich
4 personally accepted a payment from Newt 2012 for a mailing list that Gingrich Productions, in
5 fact, owned and transferred to Newt 2012. *Id.* at 8.

6 If, as the Complaint alleges, Gingrich Productions authorized the transfer without
7 payment (or for less than the fair market value of such a list) of a mailing list owned or created
8 by Gingrich Productions to Newt 2012 for the purpose of soliciting contributions, it would result
9 in a prohibited corporate contribution and corporate facilitation. *See* 2 U.S.C. § 441b(a);
10 11 C.F.R. § 114.2(a), (d)-(f).¹² And if Newt 2012 paid Gingrich personally for the purchase of a
11 mailing list that was not owned by Gingrich but by Gingrich Productions, it would result in
12 Gingrich's personal use of campaign funds. *See* 2 U.S.C. § 439a(b); 11 C.F.R. § 113.1(g).

13 The Response, however, denies the Complaint's characterization of this payment as a
14 "sham payment designed to personally enrich the Speaker," and claims that Gingrich personally
15 owned the mailing list and that it did not "in any way come from Gingrich Productions." *Resp.*
16 at 23-27. The Respondents state that "at no point in time prior to or after the list's sale to Newt
17 2012 did Gingrich Productions ever own, possess, or have access to the Speaker's mailing

¹¹ Although the attached version of the article stated that "[t]he Gingriches collect signatures of people waiting to have their books signed, and those names are funneled into [Former Speaker Gingrich's] political mailing list," *see* Compl., Ex. 10, that language differs in the version available on the *Washington Post's* website, which states "[t]he Gingriches collect signatures for the political campaign in the same places where they sign books."

¹² *See also* Factual & Legal Analysis at 4-5, MUR 6110 (VIDA Fitness and Urban Salons, Inc.) (concluding that corporate facilitation resulted when a corporation, through its founder and CEO, used its customer and friend's e-mail list to send out fundraiser invitations without advance payment to joint fundraising committee for the value of the list). *But see* Advisory Op. 2011-02 (Brown) (Commission unable to advise whether candidate's authorized committee, without help from publisher, could collect e-mail addresses of people who attend candidate's book signing and promotional events for purposes of soliciting contributions).

1 list. . . . The two lists are simply not the same.”¹³ *Id.* at 23. As further support for their denial,
2 Respondents also provided a sworn declaration from Gingrich Production’s COO attesting that
3 Gingrich Productions never “sold, attempted to sell, or negotiated to sell” a contact list or
4 mailing list to Newt 2012 or any other federal campaign committee registered with the
5 Commission, and that, “to the extent Newt 2012, Inc. purchased a contact list or mailing list
6 during the second quarter of 2011, such a list did not originate from Gingrich Productions and
7 could not have been the property of Gingrich Productions.” Melvin Decl. ¶ 11. Melvin also
8 attests that, to her knowledge, Gingrich Productions never “used corporate resources to facilitate
9 or aid the making of present or future contributions to the federal candidate.” *Id.* ¶ 9.

10 These attestations appear to refute the Complaint’s allegations that: (1) Gingrich
11 Productions used its resources to collect e-mail addresses for the purpose of soliciting
12 contributions in the future for Newt 2012; (2) Gingrich Productions provided a mailing list to
13 Newt 2012; and (3) Gingrich personally accepted a payment from Newt 2012 for Gingrich
14 Productions’s mailing list. Accordingly, we recommend that Commission dismiss the
15 allegations that Gingrich Productions, Newt and Callista Gingrich, and the Committee violated
16 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a), (d), (e), and (f), and the Committee and Gingrich
17 violated 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1. *See Heckler v. Chaney*, 470 U.S. 821 (1985);
18 *see also* Statement of Policy Regarding Commission Action in Matters at the Initial Stage of the
19 Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) (“The Commission will

¹³ The Response also asserts that Gingrich did not report the list as an asset on his Public Financial Disclosure Report because, at the time of filing, “the Speaker neither held his personal mailing list for the direct purpose of financial investment or the production of income, nor had he actually received any compensation for granting Newt 2012 access to it.” Resp. at 24. Under 5 C.F.R. § 2634.301, filers are required to disclose “any interest in property held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, having a fair market value in excess of \$1,000.” The reporting period ended for Gingrich on July 14, 2011.

dismiss a matter when the matter does not merit further use of Commission resources, due to . . . the vagueness or weakness of the evidence.").

III. INVESTIGATION

We seek authorization to investigate how Newt 2012 and Gingrich Productions structured, scheduled, funded, and staffed dual-purpose and other contemporaneous events and related travel during Gingrich's candidacy. We also will seek to obtain historical records concerning the Newt 2012 website. Therefore, we recommend that the Commission authorize the use of compulsory process, including subpoenas for answers to written questions, production of documents, and depositions, as necessary.

IV. RECOMMENDATIONS

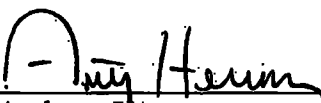
1. Find reason to believe that Gingrich Productions, Inc. and Callista Gingrich in her capacity as an officer of Gingrich Productions, Inc. violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a) and (e) by making in-kind corporate contributions to Newt 2012, Inc. by paying for costs associated with campaign-related events.
2. Find reason to believe that Newt 2012, Inc. and Lisa Lisker in her official capacity as treasurer violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d) by knowingly accepting in-kind corporate contributions from Gingrich Productions, Inc. through campaign-related events.
3. Find reason to believe that Newt 2012, Inc. and Lisa Lisker in her official capacity as treasurer violated 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1 by providing services benefitting Gingrich Productions, Inc.
4. Find reason to believe that Newt Gingrich violated 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1 by using campaign funds to benefit Gingrich Productions, Inc.
5. Find reason to believe that Newt 2012, Inc. and Lisa Lisker in her official capacity as treasurer violated 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1 through the use of Newt 2012, Inc.'s website to promote Gingrich Productions, Inc. products.
6. Find reason to believe that Newt Gingrich violated 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1 through the use of Newt 2012, Inc.'s website to promote Gingrich Productions, Inc. products.

- 1 7. Find reason to believe that Newt 2012, Inc. and Lisa Lisker in her official
2 capacity as treasurer violated 2 U.S.C. § 434 and 11 C.F.R. § 104.9.
- 3
- 4 8. Dismiss the allegation that Gingrich Productions, Inc., Newt Gingrich, and
5 Callista Gingrich violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(a) and (f) by
6 authorizing the transfer of a mailing list owned by Gingrich Productions, Inc. to
7 Newt 2012, Inc. for the purpose of soliciting contributions, or by authorizing the
8 use of corporate funds to pay for collecting addresses at book signing events for
9 the purpose of soliciting contributions.
- 10
- 11 9. Dismiss the allegation that Newt 2012, Inc. and Lisa Lisker in her official
12 capacity as treasurer violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(d) by
13 accepting a mailing list owned by Gingrich Productions, Inc. for the purpose of
14 soliciting contributions.
- 15
- 16 10. Dismiss the allegation that Newt 2012, Inc. and Lisa Lisker in her official
17 capacity as treasurer violated 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1 by paying
18 campaign funds to Newt Gingrich for a mailing list owned by Gingrich
19 Productions, Inc.
- 20
- 21 11. Dismiss the allegation that Newt Gingrich violated 2 U.S.C. § 439a(b) and
22 11 C.F.R. § 113.1 by accepting campaign funds for a mailing list owned by
23 Gingrich Productions, Inc.
- 24
- 25 12. Approve the attached Factual & Legal Analysis.
- 26
- 27 13. Approve the appropriate letters.


14. Authorize the use of compulsory process in this matter, including the issuance of appropriate interrogatories and document subpoenas, and depositions, as necessary.

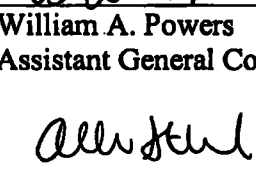
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